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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1955

No. 581

OHIO TRANSPORT, INC.,
*Petitioner*

v.

PUBLIC UTILITIES COMMISSION OF OHIO,
*Respondent*

## PETITION OF OHIO TRANSPORT, INC. FOR REHEARING OF ORDER DENYING PETITION FOR CERTIORARI

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*To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:*

Comes now Ohio Transport, Inc., Petitioner above named, and prays that this Court grant a rehearing of its order of the 5th day of March, 1956 denying the Petition for a Writ of Certiorari, and that a writ of certiorari issue to review the judgment of the Supreme Court of Ohio which was entered on the 20th day of July 1955, all as prayed for in the Petition for Writ of Certiorari heretofore filed herein.

### Reasons for Granting Rehearing and Issuing the Writ

Primarily involved is the relationship of the provisions of Section 614-39 of the General Code of Ohio (Section

4903.08 Revised Code of Ohio), constituting a general *Immunity Statute,* to the Equal Protection clause of the Fourteenth Amendment of the United States Constitution. The Ohio Statute reads as follows:

> "No person shall be excused from testifying or from producing accounts, books and papers, in any hearing before the Commission or any member thereof or any person appointed by it to investigate any matter or thing under its jurisdiction, on the ground or for the reason that the testimony or evidence might tend to incriminate him or subject him to a penalty or forfeiture, but no such person shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he may have testified or produced any documentary evidence; provided that no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying."

The Petitioner, a domestic corporation, is a motor carrier engaged in intra-state commerce pursuant to license and permit granted to it by the Respondent, Public Utilities Commission of Ohio. The Petitioner's license and permit to so operate has been revoked by the Respondent, which revocation has been affirmed by the Supreme Court of Ohio, that Court sustained its affirmance on the specific ground that corporations are not entitled to the constitutional immunities accorded to private persons in like matters, and upon the further ground that the revocation of the Petitioner's license and permit was not a penalty or forfeiture within the Immunity Statute above cited.

Manifestly, the problem thus presented is whether the Petitioner, by virtue of the aforesaid Immunity Statute and its interpretation by the Supreme Court of Ohio, has been denied its rights under the Equal Protection clause of the Fourteenth Amendment of the United States Constitution.

In support of the citation on the hearing before the

Respondent culminating in the revocation of Petitioner's license and permit, the Petitioner's President was called, in his representative capacity, to testify as a witness on behalf of the Respondent. Obviously, therefore, having made timely and proper objection to such procedure and having preserved its rights to immunity under the section of the Revised Code above cited, the State of Ohio was thereafter precluded from the assertion of jurisdiction, right or authority to impose upon the Petitioner any mandate having for its purpose the deprivation of the Petitioner's rights under its license and permit—*a fortiori*, the Respondent Public Utilities Commission of Ohio, being a mere administrative adjunct of the sovereign.

Thus, at bar, the problem is posed: May a State Immunity Statute exclude from its protective orbit the corporate entity, while according such protection to private individuals, and does such exclusion do violence to the Equal Protection clause of the Fourteenth Amendment of the United States Constitution?

This Honorable Court has recently declared in *Wheeling Steel Corp.* v. *Glander, Tax Commissioner of Ohio,* 337 U.S. 562, 69 S.Ct. 1291:

> "It has consistently been held by this Court that the Fourteenth Amendment assures corporations equal protection of the laws, at least since 1866, Santa Clara County v. Southern Pacific R. Co., 118 U.S. 394, 396, and that it entitles them to due process of law, at least since 1889, Minneapolis & St. L. R. Co. v. Beckwith, 129 U.S. 26, 28."

See also: *Railway Express Agency* v. *New York,* 336 U.S. 106; *Ott* v. *Mississippi Barge Line,* 336 U.S. 169.

The importance of the question is further emphasized when one considers that the Supreme Court of the State of Ohio has announced that the revocation of a license and permit of an intra-state carrier does not constitute a penalty or forfeiture within the Immunity Statute. In essence, therefore, a multi-million dollar enterprise such

as the Petitioner is engaged in, constitutes, in the opinion of the Supreme Court of Ohio, a gift perpetually subject to the whim and caprice of an administrative adjunct, Public Utilities Commission of the State of Ohio, and such a license and permit confers upon the donee no property rights within the sphere of constitutional protection. Respectable authority appears to the *contrary*. *Cf. Wignal* v. *Fletcher,* 303 N.Y. 435, 103 N.E. (2d) 728, where the New York Court of Appeals held that a license to operate an automobile is not a mere gift, but once acquired is something of real value and may not be revoked arbitrarily and taken away capriciously. Thus if a comparatively inconsequential, insignificant or minute license or permit to operate an automobile confers upon the holder a *tangible, vested property right,* certainly we cannot countenance the pronouncement that the holder of an intra-state motor carrier's license and permit, involving multi-millions of dollars of business and investments, employing vast numbers of people, serving multiple and diverse industries, and involving public necessity, good and interest, may be revoked and nullified without adherence to constitutional guarantees.

Equal protection of the laws is not an abstract right, but is a *command* which the State *must* respect. *Hill* v. *The State of Texas,* 316 U.S. 400, 62 S.Ct. 1159.

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I, Edward J. Hayes, Associate Counsel for the above-named Petitioner, do hereby certify that the foregoing Petition is presented in good faith and not for the purposes of delay, and further certify that the Petition is restricted in accordance with Rule 58, subdivision 2, of the Rules of this Court.

EDWARD J. HAYES